

Development of a Tool for Compliance With the California Coastal Act

Proposal of the California Coastal Commission for the 2006 NOAA Coastal Management Fellowship Project



Humboldt Bay, Eureka

Submitted by: _____

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California's Proposal for 2006-2008 NOAA Coastal Fellowship

DEVELOPMENT OF A TOOL FOR COMPLIANCE WITH THE CALIFORNIA COASTAL ACT

Introduction

The California Coastal Commission (“the Commission”) is a State environmental agency that regulates all “development” taking place within California’s coastal zone, which extends from Oregon to Mexico and encompasses some 1.5 million acres of land along California’s 1,100-mile-long coast (and around nine offshore islands). The Commission makes coastal development permit decisions and reviews local coastal programs (“LCP’s”) prepared by local governments and submitted for Commission approval; the Commission also reviews federal activities that affect the coastal zone. The Commission’s enabling legislation is the California Coastal Act of 1976 (“the Coastal Act”), which created a far-reaching and comprehensive coastal protection program by establishing a partnership between the State (acting through the Commission) and local government (15 coastal counties and 58 cities) to manage the conservation and development of coastal resources through planning and regulatory action.

The Commission issues approximately 1,000 permits a year for development proposals along the coast. “Development” is broadly defined under the Coastal Act and includes disposal of materials and divisions of land as well as the more traditional types of development. The Commission approves approximately 95 to 96% of all its permit applications. These developments range from hotels to subdivisions to wetland restoration projects to seawalls to single family homes. The Commission must ensure that where development will have adverse environmental impacts, those impacts are avoided or minimized in order for the development to be consistent with the provisions contained in the Coastal Act. Thus, when the Commission approves permits, the vast majority of them contain conditions of approval that, if met, will bring the development into conformance with the Coastal Act.

The Coastal Act seeks to protect and enhance wetlands and other environmentally sensitive habitat areas, public access, low-cost visitor-serving recreational uses, agricultural uses, commercial and recreational fishing, visual resources, and community character. The Coastal Act also seeks, where possible, to establish urban-rural boundaries and direct new housing and other development into areas with adequate services. Because of the diverse nature of development proposals reviewed by the Commission, the types of permit conditions vary greatly. Some of the permit conditions are required to be met prior to issuance of the permit, such as the recordation of an open space easement, or the submittal of final plans that demonstrate compliance with other permit conditions. Other permit conditions require or prohibit future actions, such as performing restoration or other mitigation measures, or prohibiting development in habitat areas. Compliance with the “prior to issuance” conditions is relatively easy to achieve and monitor because the permit applicant does not obtain the permit that allows the project to proceed until all “prior to issuance” conditions are met, so the applicant is motivated to comply with those conditions, and Commission staff receives the information necessary to determine compliance. More difficult to achieve and monitor is compliance with conditions that require or prohibit actions after permit issuance. Once a permit has been issued, the permittee is less motivated to comply with the conditions of the permit and the Commission staff must be more proactive to determine whether there has been compliance.

The majority of permits are granted *only* because conditions imposed by the Commission bring the project into compliance with the policies of the Coastal Act. Without these conditions, the project would not comply with the Coastal Act and could not be approved. Thus, implementation of important Coastal Act policies does not stop at issuing permits; insuring that the conditions of approval are met is critical. While the Commission's enforcement unit handles hundreds of reported violations a year, and compliance monitoring is often handled by the permit staff, overall, the Commission lacks a systematic program to track compliance with permit conditions. The result is that there is uncertainty by the Commission and the public as to whether the policies of the Coastal Act are actually being implemented and enforced as intended.

There are a number of reasons why the Commission lacks a systematic program for monitoring permit condition compliance. The huge volume of permits being processed, many with numerous and complex "special conditions;" the lack of adequate numbers of staff and fiscal resources; and the necessity of meeting statutory deadlines for permit and LCP actions all have created challenges to establishing such a program.

1) Project

The Commission is seeking a Coastal Services Center Coastal Management Fellow who is innovative and has multi-disciplinary interests in government and public policy, resource protection, and database organization. The Fellow will work collaboratively with Commission enforcement, permitting, and technical staff to develop a program for monitoring condition compliance by creating a pilot program in two of the Commission's six district offices: Ventura and Eureka. These two offices have been selected because they provide the best contrast of the work the Commission is involved in and the greatest diversity of the types of development and violations being addressed by the Commission: the Ventura office deals with issues presented by urban and suburban areas, and with a large valuable habitat area (the Santa Monica Mountains) that is surrounded by urban development and subject to extreme development pressures; the Eureka office is one of the smallest of the Commission offices, with very significant, much less urbanized resources at stake. The Fellow will identify the challenges the Commission faces in monitoring condition compliance and develop proposals for what it would take for the agency to monitor the compliance of permits. Working with an Advisory Committee that includes staff from each district office who will provide input and review draft proposals, the Fellow will create a pilot program, put the pilot in place and then assess and modify the pilot as necessary. The Fellow will also develop recommendations for achieving more condition compliance. These can include recommendations for improving permit conditions, educating the public, and working with local governments. The Fellow will also design and implement a database that will facilitate efficient monitoring of condition compliance. The database could be part of one of the Commission's existing databases, like the permit tracking system database or enforcement tracking database, or could draw from these databases.

The Fellow's challenge will be to fully understand how and why the Commission operates and to create an efficient condition compliance program within the existing constraints. This will involve coordination with a number of different people, getting input, thinking creatively, and using education and objectivity to suggest recommendations, etc.

2) Goals and Objectives

- To develop, assess, and modify a pilot program for effective condition compliance monitoring in the Commission's Ventura and Eureka offices, and to make recommendations for improving compliance
- To develop a final program to systematically monitor permit compliance statewide
- To develop a permit condition compliance database and coordinate with existing databases
- To evaluate permit condition language, and make recommendations for improvements
- To develop an understanding of how local governments monitor condition compliance
- To link permit condition compliance data to the Commission's enforcement and permit tracking data bases
- To provide a learning environment for the Fellow, in which s/he will develop an expertise in coastal land use environmental public policy and management, and will be exposed to a wide range of coastal zone management issues including land use planning, hazards, public access, recreation, visual resources, and environmentally sensitive areas.
- To collect workload and other supporting data and assist the Chief Deputy Director in the preparation of a Budget Change Proposal ("BCP") to be submitted to the Department of Finance to request additional staff resources identified through this pilot project.

3) Milestones and Outcomes

Activities (activities within each cell are concurrent)	Deadline for completion
<i>Commission Orientation:</i> <ul style="list-style-type: none">• Become familiar with the policy, permitting, and enforcement provisions of the Coastal Act and regulations• Develop contacts with local governments and resource agencies by attending the Santa Monica Mountains ("SMM") Intergovernmental Agency Task Force and attending other meetings with local government in the context of specific projects or cases• Attend several Coastal Commission meetings• Attend permit staff meetings of the Ventura and Eureka offices• Work with permit staff in the Ventura and Eureka offices to become familiar with the permit process• Work with enforcement staff to become familiar with the enforcement process, including participation in the monthly statewide enforcement conference calls• Become familiar with existing data and resources, including the permit tracking data base, OTD database, and the enforcement database• Become familiar with how staff recommendations and recommended permit conditions are written	1 Dec 2006 (4 mos)
<i>Evaluation:</i> <ul style="list-style-type: none">• Identify inadequacies in the existing system of permit condition compliance by identifying what is being done to assess condition	1 Feb 2007 (2 mos)

<p>compliance and what is not being done and the rough level of condition compliance</p> <ul style="list-style-type: none"> • Talk to permit managers and enforcement staff to identify challenges to monitoring compliance with Commission permits • Talk to permit managers and enforcement staff (and others as appropriate) to evaluate whether there are specific types of permit conditions that present particular challenges and for which particular solutions should be sought (e.g., open space easements held by non-profits or local governments) • Develop recommendations regarding improvements in drafting and monitoring compliance with these conditions • Prepare a report identifying the challenges the Commission faces in assessing condition compliance 	
<p><i>Pilot Program:</i></p> <ul style="list-style-type: none"> • Prepare and present a pilot program for condition compliance monitoring in Ventura and Eureka offices that includes the following components: <ul style="list-style-type: none"> ○ a methodology for coordination between permit staff and technical staff ○ a methodology for coordination with local government staff ○ a system to monitor areas that have been restricted to open space or dedicated to public access either through deed restrictions or conservation easements to evaluate whether there has been construction or other development within restricted areas ○ a database for condition compliance ○ appropriate links between existing databases (enforcement; Permit Tracking) and new condition compliance database 	<p>August 2007 (6 mos)</p>
<p><i>Recommendations and Assessment of Pilot:</i></p> <ul style="list-style-type: none"> • Assess success of pilot in Ventura and Eureka offices • Consult with enforcement and permit staff in Ventura and Eureka to evaluate pilot application and identify potential improvements • Modify methodology for future use • Prepare draft recommendations for including in LCPs condition compliance monitoring policies and ordinances • Prepare draft recommendations concerning public education about condition compliance, including suggestions for a written handout explaining the process • Draft recommendations for improving compliance with conditions, e.g., changes to condition language, etc. • Develop information necessary to support a Budget Change Proposal (“BCP”) if recommended 	<p>Feb 2008 (6 mos)</p>
<p><i>Finalization:</i></p> <ul style="list-style-type: none"> • Finalize and present proposed condition compliance program for use statewide 	<p>August 2008 (6 mos)</p>

<ul style="list-style-type: none"> • Prepare a report with recommendations to improve the systematic program (e.g., BCP to increase number of staff positions, improved technology, etc.) • Prepare final recommendations for including in LCPs condition compliance monitoring policies and ordinances • Prepare final recommendations concerning public education about condition compliance, including suggestions for a written handout explaining the process • Develop written materials for outreach to public, regulated community, legal representatives • Prepare final report with recommendations for improving compliance outside of enforcement 	
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Specific anticipated outcomes of benefit to the State CZMA program include:

- 1) Replacement of ad hoc compliance monitoring with an efficient and effective systematic method of monitoring condition compliance;
- 2) Creation of a database for monitoring condition compliance in the Coastal Zone;
- 3) Development of more effective methods for achieving condition compliance;
- 4) Coordination with local government to build into LCPs condition compliance monitoring policies and ordinances.

Specific anticipated outcomes of benefit to the Fellow include:

- 1) Gaining an understanding of coastal zone management operations in the State of California, and a familiarization with important policy issues in coastal zone planning;
- 2) An opportunity to use education and creativity to design a government program that will insure better protection of California's coastal resources;
- 3) Developing expertise in communicating with land use planners and technical experts;
- 4) An opportunity to improve oral and written communication skills;
- 5) Developing expertise in creating and managing a database;
- 6) Gaining familiarity with the Ventura District (which includes Malibu and other very urbanized areas as well as the largely rugged Santa Monica Mountains area) and North Coast District (largely rural with high stakes in terms of resources at risk) of the Commission and the types of environmental issues that arise in those diverse areas;

4) Project Description

Orientation (4 months)

The first phase of the Fellowship will be a period of orientation and planning for the Fellow. The Fellow will spend approximately the first four months becoming familiar with the California Coastal Act, the Commission and its staff, and the challenges that the Commission staff faces in monitoring condition compliance and achieving compliance with the Coastal Act. During this period, the Fellow will have the opportunity to travel to the Ventura and North Coast District offices of the Commission to meet the Commission staff, to meet with the staff of local governments, and to become familiar with the geographic area of each of these two districts.

To become familiar with the Coastal Commission, the Fellow will attend at least several of the monthly Commission meetings; monthly Enforcement statewide conference calls, and at least several District Staff meetings in both the Ventura and Eureka offices where pending projects are reviewed; and monthly Santa Monica Mountains Task Force meetings. The Fellow will be asked to read the Coastal Act and the Commission's administrative regulations, as well as a few LCPs to become familiar with the way local governments implement the policies of the Coastal Act. The Fellow will also read staff reports that deal with a variety of different types of development, which will help educate the Fellow about the various coastal issues with which the Commission is concerned, and the Fellow will read the Enforcement Manual to learn about the Commission's statewide enforcement program. Additionally, the Fellow will "shadow" a coastal planner for a week or so to learn firsthand about the coastal development permit process. The Fellow will accompany Commission permit or enforcement staff on site visits to properties where there are alleged Coastal Act violations or pending coastal permit applications. The Fellow will also spend a week "shadowing" an enforcement officer to learn how the enforcement program works.

The Fellow will interview the Database Administrator to learn how the current databases are organized and how they operate, and will evaluate the possibility of linking the existing databases.

Evaluation (2 months)

Following the orientation period, the Fellow will work with Commission staff to identify the existing tools and methods for condition compliance, and identify inadequacies in the existing methods of condition compliance monitoring. The Fellow will select for detailed evaluation some active, issued permits with outstanding condition compliance for a variety of diverse special conditions, and track how the conditions are met for the purpose of understanding the problems and challenges staff faces in monitoring condition compliance. The Fellow will review examples of completed, successful condition compliance, as well as review examples of incomplete and unsuccessful condition compliance, and identify why certain projects have successful condition compliance and why others do not.

The Fellow will talk to permit managers and enforcement staff to identify challenges to monitoring compliance with Commission permits, and to evaluate whether there are specific types of permit conditions that present particular challenges and for which particular solutions should be sought. The Fellow will begin to develop recommendations regarding improvements in drafting and monitoring compliance with permit conditions, and will prepare a report identifying the challenges the Commission faces in assessing condition compliance.

Pilot Program (6 months)

The Fellow will prepare a pilot program for condition compliance monitoring in the Ventura and Eureka offices, in consultation with permit and enforcement managers and the Advisory Committee. The Fellow will select from each office various sample permits that have conditions that require future compliance, and will develop a methodology for implementing improved condition compliance. The Fellow will develop a methodology for coordination between permit staff and technical staff, which will involve interviewing permit staff members from various offices, as well as interviewing technical staff such as the Commission's geologist, coastal engineer, biologist, and mapping staff, to become familiar with how they interact and review various aspects of coastal projects. The Fellow will also develop a methodology for coordination with local government (planners, building inspectors, code enforcement) and other agencies, such as the State Department of Fish and Game and the State Lands Commission. To accomplish this, the Fellow will meet with local planners and code enforcement officers to learn how local governments currently monitor condition compliance and deal with Coastal Act violations. The Fellow will consider also contacting other state and federal agencies to draw from their experiences monitoring compliance with permits and other requirements.

As part of the pilot program, the Fellow will develop a system to monitor areas that have been restricted to open space or dedicated to public access either through deed restrictions or conservation easements to evaluate whether there has been construction or other development within these restricted areas, and to develop recommendations regarding monitoring these easements, which may include working with accepting entities that hold these easements, as well as with Commission staff.

As part of the pilot program, the Fellow will create and implement a new database for condition compliance, and effectuate appropriate links between existing databases, such as the enforcement database and the Permit Tracking database, and the new condition compliance database. Alternatively, the Fellow will work to enhance the existing databases to track condition compliance and monitoring reports. The Fellow will coordinate with the Database Administrator in the Commission's headquarters office.

Assessment of Pilot: 6 months

The Fellow will assess the success of the pilot program in the Ventura and Eureka offices, and will consult with enforcement and permit staff in these offices, as well as with the Advisory Committee, to evaluate the pilot application and to identify potential improvements. The Fellow will then modify the methodology based on feedback from staff on how the program has worked to effectively monitor condition compliance.

The Fellow will then prepare draft recommendations for including in LCPs condition compliance monitoring policies and ordinances so that local governments are able to effectively achieve condition compliance with their coastal permits.

The Fellow will prepare draft recommendations for the development of a public education handout that would explain the condition compliance process to permit applicants, the regulated community, and their representatives (including legal representatives). The Fellow will work

with the Public Education and enforcement divisions in the Commission's headquarters office in this effort.

Finalization (6 months)

The Fellow will finalize and prepare the proposed program for use statewide, incorporating staff feedback into the final product. The Fellow will prepare a report with recommendations to improve the systematic program, including providing workload and other supporting data to assist the Chief Deputy Director in the preparation of a Budget Change Proposal to be submitted to the Department of Finance to request additional staff resources if identified as necessary in the pilot project.

The Fellow will prepare final recommendations for including in LCPs condition compliance monitoring policies and ordinances. The Fellow will prepare final recommendations for a public handout explaining condition compliance. The Fellow will also prepare a final report with recommendations for improving compliance outside of enforcement.

Based on knowledge gained during development of the pilot and recommendations, the Fellow will also make recommendations on how to prioritize violations, and will work with enforcement staff and managers on the course of action when condition compliance is not achieved and a Coastal Act violation exists. The Fellow will interview the district enforcement officers in each office, as well as the Statewide enforcement officers, to learn about how the current enforcement program deals with condition compliance violations. The Fellow will read selected violation files on various types of violations, and will read sample cease and desist and restoration orders. The Fellow will evaluate the effectiveness of the current system of pursuing and resolving condition compliance violations in light of the condition compliance project as a whole.

5) Fellow Mentoring

The Fellow will reside in the Headquarters Office of the Coastal Commission in San Francisco. The Commission's Chief of Enforcement, Lisa Haage, will be the formally designated mentor and will be available on a daily basis for direction and consultation. The Commission's Deputy Director, Jack Ainsworth, and the Deputy Chief Legal Counsel, Amy Roach, will serve as mentors as well. An Advisory Committee that includes representatives from each office will also provide input and feedback.

The Fellow will be a member of the Commission's enforcement unit and participate in its regular staff meetings and be included in other case specific meetings which can inform the overall project. In addition, the Fellow will meet and confer with staff from the Commission's district offices. It is anticipated that the fellow will travel to the Commission's Ventura and Eureka offices, thereby working with the managers and supervisors of those offices. This project involves policy issues that affect the entire agency; therefore, the Fellow would be included in key policy discussions working with staff and managers from all the Commission offices.

6) The California Coastal Commission

The California Coastal Commission was established as a result of a 1972 voter initiative creating a temporary commission to develop a statewide plan to protect the resources of California's coastal zone. In 1976, the state legislature adopted most of the policies of the resulting plan and established the Commission as a permanent state agency with a mandate that includes the protection and enhancement of wetlands and other environmentally sensitive habitats in the coastal zone. The Commission comprehensively manages coastal resources using planning, permitting and non-regulatory mechanisms, in cooperation with federal, state, and local agencies. Along with federal consistency review authority, the Commission's primary mechanism for implementing its management plans for the coast is the coastal development permit program. These permits are issued either directly by the Commission or by a local government to which this authority has been delegated through a certified Local Coastal Program (LCP).

7) Cost Share Description

The \$15,000 cost-sharing element of this proposal will be funded from the Coastal Commission's regular personnel budget, provided from the State's general fund. In addition, the State will provide the Fellow with all pertinent work facilities, computer, and will bear in-kind costs associated with support of the Fellow as follows:

	CSC	California	Total
Personnel	\$60,000	\$15,000	\$75,000
Mentoring	0	\$25,000	\$25,000
Facilities operations	0	\$36,000	\$36,000
Travel within California	0	\$5,000	\$5,000
Equipment	0	\$4,000	\$4,000
Training	0	\$1,000	\$1,000
Software and data processing	0	\$4,000	\$4,000
Printing	0	\$2,000	\$2,000
Telephone and communications	0	\$4,000	\$4,000
Postage	0	\$2,000	\$2,000
General supplies	0	\$4,000	\$4,000
TOTAL FOR 2 YEARS	\$60,000	\$101,000	\$157,000

Reference

California Coastal Commission website:
<http://www.coastal.ca.gov>